

**IgLou Internet Services**

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December 20, 2004

Marlene H. Dortch  
Office of the Secretary  
Federal Communications Commission  
445 12<sup>th</sup> St., SW  
Suite TW-A325  
Washington, D.C. 20554

Re: WC Docket No. 04-405

Please accept this formal response to the forbearance petition recently filed by BellSouth regarding open access to DSL transport. We respectfully submit our formal opposition to the petition.

IgLou Internet Services is a regional Internet Service Provider headquartered in Louisville, Kentucky with approximately 3,000 residential and business DSL customers. IgLou, in cooperation with other local Internet providers in Kentucky, has had a long history of working with regulators and legislators to help try and ensure consumers have fair and equal access to the physical wire transports used to carry network signals to our customers.

The forbearance petition presented by BellSouth makes an argument that mandated open access of DSL transport will impair their ability to compete, and implies that continued regulatory control is not in the best interest of the consumer. We believe that the opposite is true on both counts and attempt to support our position on this matter.

The issue before the FCC is not about what is best for BellSouth's future. Rather, the much more important issue at hand is whether or not the requested change is in the best interest of this country's national broadband policy.

*It is our strong belief that following the forbearance recommendations of BellSouth could single-handedly be the worst policy change in our country's brief broadband history.*

**Scarce Resources**

Although this point is self-evident, the foundation of the open access issue is that the wire infrastructure feeding this nation's access is a scarce resource. The coaxial and copper wire that feeds the majority of homes and businesses were put in place with access to

easements and public rights of way given by the public in trade for a promise of future value. Due to the size and scope of the infrastructure, it is not easily replicated in any fashion, and doing so would not be in the public best interest.

Replicating a new DSL transport network for use over the existing telephone network would be phenomenally cost prohibitive. Although access to central offices is viable for some DSL equipment, the majority of homes and businesses are beginning to be served by fiber-fed *remote-terminals* that are currently unreachable by any party other than BellSouth.

Even if replicating the DSL network by a new competitor were feasible, we do not believe it is in the country's best interest to have resources spent in that manner. By closing access to the DSL transport network, BellSouth would needlessly force new emerging companies to consider reinventing new transport technology, with no significant gain in value to the public.

It is not in the public best interest to allow control of such an expansive network without oversight of its use, deployment and who can access it.

### **Businesses, not technology, provide competition**

Our nation prospers when a free market has responsible control over its scarce resources. Ownership of our country's interstate system, railroad system and airways are highly regulated in order to ensure that all members of our economy have open and safe access. It is well understood that replicating alternatives to these transports would not truly be "competition", but rather a waste of valuable resources.

For any significant new competitor to truly provide a world-class alternative to coaxial cable and copper wire, an entire rewiring of every home and business in the country would be required<sup>1</sup>. This approach is obviously not consistent with what should be a well-planned national broadband strategy.

True competition comes from businesses providing services (i.e. Internet, VOIP, video, etc) based upon software innovations that make use of the underlying transports. It is critical to understand that technology does not provide competition. Technology is simply a tool to help provide businesses a way to provide a particular service.

To state that there is significant competition already available to justify the elimination of fair and open access is simply not true. We only have a small number of differing transports in place with a very limited number of services riding on top of them. This country needs to encourage continued innovation and opening access to these transports is the right way to encourage this growth.

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<sup>1</sup> Wireless may be given as an exception, but wireless technology can never completely replicate the reliability of fixed wired transports due to potential insurmountable interference issues and a highly limited amount of available spectrum.

Eliminating open access to DSL service is exactly the wrong thing to do. Policy makers should embrace the enormous value in our country's infrastructure and preserve open access in order to promote innovation.

### **It's all about the software**

Advances in software technology, not wire, have opened the doors to the Internet, video on-demand, and the thousands of other advancements over the past 20 years. The wire itself is a critical component, whether coaxial or copper, but is otherwise transparent to these software advances. They simply provide a required transport medium in order to carry the software services to the end user.

By eliminating fair and open access to DSL transport, new emerging software technologies would be needlessly forced to find alternative transports that do not exist. To suggest that future technology services must replicate a new transport system just to carry their service is inefficient, cost prohibitive and irresponsible use of public policy.

It is essential that we not slow advancement of new services simply because new software technologies must seek alternate transport methods.

### **Embrace choice of Provider**

Small entrepreneurial companies developed almost all of the innovations that led to the creation of the Internet. The very nature of this young and often naïve industry has left us with only a limited and disorganized voice to congress and the FCC.

Only in the past 5 years have many small businesses begun to notice the trend towards closed access to our national transport networks. In contrast, the telephone companies and cable companies have spent years posturing themselves for eventual sole and complete access to the nation's public network. Who could blame them after all?

There is a voice in the average consumer in this country, and those voices would overwhelmingly tell the commission that closed access is not something they asked for from their government. We believe that the average consumer, be it residential or commercial, wants to be able to have a multitude of choices in their service provider.

Having a true choice in service means open access to the underlying transport technologies and requires having a mandated open access policy that promotes innovation by a large number of companies.

### **Costs of open access**

Consistently throughout the years, BellSouth appears to have thrown a red herring to regulators about the high costs of requiring open access to their DSL infrastructure. Specific costs mentioned by BellSouth are ordering systems, the RBAN network for aggregating access across multiple states, and network protocol issues.

What is conveniently left out of these discussions is the fact that BellSouth's wholesale DSL transport is already treated as a retail product. It is sold at rates that often meet or exceed what BellSouth sells the base transport AND associated service for.

Further, most of the costs that BellSouth has specified as resulting from mandated open access are one-time design decisions that could likely be identified as fixed costs. Once these systems are complete, they eventually are inherent in the network design itself. Any variable costs in providing open access are already being provided for in BellSouth's current rates for wholesale DSL.

As an Internet company, IgLou is well aware of the complexity needed to implement a network of BellSouth's size. Providing open access in such a network does require careful planning and design. However, we believe the majority of BellSouth's DSL transport network would likely have been of similar technical design regardless of whether or not they ever were required to offer open access.

The maturation of BellSouth's DSL network may have been accelerated as a result of open access, but those improvements would likely have taken place at some point anyway.

### **Effect on business**

The effect of closed access to DSL transport on small business would be considerable. The only alternative to DSL service for businesses is typically expensive T1 services. Because consumers would essentially have only a single choice for access (BellSouth), there would be no competition. Any value-added services currently provided by independent DSL providers would be unavailable as there would be essentially no choice in transport.

Line sharing DSL providers, such as Covad, require replication of at least part of the underlying transport network. Again, this contradicts an intelligent broadband policy. Requiring competing services to replicate the transport is an unnecessary burden. It also unnecessarily limits competition to only companies who risk huge amounts of capital to replicate parts of the transport network. Open access would ensure even the smallest software entrepreneurs could offer value-added services to consumers.

Wireless services are not mature enough to handle interference issues in urban areas and do not come close to replicating the reliability of fixed wire transports. To offload data transport to the public airwaves when a suitable and superior solution is already in place is not good national policy.

### **Closing**

BellSouth's arguments before the FCC appear to mimic that of a spoiled child who has been given everything, but complains that their sibling has been given an extra toy. As a

responsible parent, the commission should do what is in the best interest of the family and not what the child perceives is in their own best interest.

History books will record the decision made in this issue in one of two ways. The question at hand is whether the current generation of policy makers will be known as those who take firm action and help move the country forward towards a responsible use of our nation's scarce resources, or those who ultimately set our nation back another 20 years and leave it for future generations to resolve.

Moving the country forward requires continued and *strong* mandated open access to DSL transport.

Respectfully,

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